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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,021	02/07/2002	Yu Zheng	PAT-1267DIV	3011

7590 04/07/2004

Law Offices of Raymond Sun  
12420 Woodhall Way  
Tustin, CA 92782

EXAMINER
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CANFIELD, ROBERT

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/072,021

Applicant(s)

ZHENG, YU

Examiner

Robert J Canfield

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. This Office action is in response to the amendment filed 12/29/03. Claims 1-21 have been canceled. Claims 22-27 remain pending.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 22-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,305,396. Although the conflicting claims are not identical, they are not patentably distinct from each other because the roof of the patented claims is considered the covering of the instant claims.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 22, 23, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,137,044 to Brady.

Brady provides sleeves 50 for retaining frame members 42a and 42b which are hingedly coupled and which may be folded into a plurality of concentric rings as shown in figure 16. A covering in the form of the disclosed second layer (description of figure 19 and column 11, lines 62+) can be placed over but not enclosing the support frame in the unfolded orientation the covering being separate and removable.

6. Claims 22, 23, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,645,096 to Hazinski et al.

Hazinski provides sleeves 45, 46 for retaining frame members which are hingedly coupled and which may be folded into a plurality of concentric rings as shown in figures 9e-126. A covering in the form of fly can be placed over but not enclosing the support frame in the unfolded orientation the covering being separate and removable.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 6-42227 in view of U.S. Patent 5,137,044 to Brady.

The Japanese references provides circular foldable frame members 3 forming a support frame. The frame members are collapsible to a folded position to form a plurality of concentric rings. Figure 1 shows at least four support frames hingedly connected to one another where the left side of each support frame is hingedly coupled to the right side of an adjacent support frame to define an enclosed space.

The Japanese reference fails to provide a covering placed over the support frame but not enclosing the support frame the covering being removable.

Brady teaches it was well known at the time of the invention to provide a second covering draped over and removable from a support frame as described in figure 19 and at column 11.

It would have been obvious at the time of the invention to one having ordinary skill in the art to have draped a removable second covering over the structure of the Japanese patent in the unfolded orientation as taught by Brady so as to provide addition protection from inclement weather. This second covering is typically referred to a rain fly in the tent art.

9. Claims 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,301,705 to Zheng in view of U.S. Patent 5,137,044 to Brady.

Zheng provides circular foldable frame members 34, 38, 42, 46 forming a support frame. The frame members are collapsible to a folded position to form a plurality of concentric rings. Figure 2 shows four support frames hingedly connected to one another where the left side of each support frame is hingedly coupled to the right side of an adjacent support frame to define an enclosed space.

Zheng fails to provide a covering placed over the support frame but not enclosing the support frame the covering being removable.

Brady teaches it was well known at the time of the invention to provide a second covering draped over and removable from a support frame as described in figure 19 and at column 11.

It would have been obvious at the time of the invention to one having ordinary skill in the art to have draped a removable second covering over the structure of Zheng in the unfolded orientation as taught by Brady so as to provide addition protection from inclement weather. This second covering is typically referred to a rain fly in the tent art.

10. Applicant's arguments with respect to claims 25+ (that the covering 30 of Brady is placed over the structure in the unfolded orientation) have been considered but are moot in view of the new grounds of rejection where a different covering, as noted above, is relied upon to meet the claims. The amendment did overcome the previous rejections under Irwin.

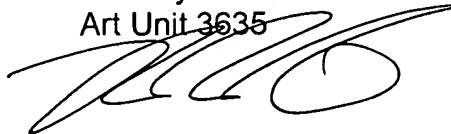
11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J Canfield whose telephone number is 703-308-2482. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J Canfield  
Primary Examiner  
Art Unit 3635



04/01/04